IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1695 of 2006
with
CIVIL APPLICATION No.5681 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMESHBHAI CHHAGANBHAI DOBARIYA - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR PANDYA FOR HL PATEL ADVOCATES for Petitioner(s) : 1,
MR MENGDEY, AGP for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 17/07/2006

ORAL JUDGMENT

1. With the consent of the learned Counsel

appearing for both the sides, when the Civil Application is taken up for hearing, the main Special Civil Application itself is finally heard.

2. The short facts of the case are that the petitioner was granted lease. The show-cause notice was given by the District Collector on 25.3.1999 for the irregularities and breaches of the conditions of the lease. It appears that thereafter the petitioner submitted the reply and the District Collector ultimately on 6.5.1999 passed the order, whereby the lease is terminated. It appears that the petitioner carried the matter further before the State Government and the State Government ultimately vide order dated 17.12.2005 dismissed the revision. It is under these circumstances, the petitioner has approached this Court by preferring the present petition.

3. Heard Mr.Pandya, learned Counsel appearing for the petitioner and Mr.Mengdey, learned AGP for the State Authorities.

4. Upon hearing the learned Counsel appearing for

both the sides, it appears that the breaches in part are found as committed and so far as those findings are concerned, Mr.Pandya, learned Counsel appearing for the petitioner has not challenged those findings. Mr.Pandya, learned Counsel appearing for the petitioner mainly pressed the contention on the aspects of quantum of penalty. He submitted that as per the provisions of Rule 22 read with Part 9 of the Quarry Lease Agreement, various options are given to the Authorities of imposing various types of punishment, including of imposition of fine and also of termination of the lease. In the submission of Mr.Pandya, there is no application of mind by all the Authorities on the question of quantum of punishment.

5. Mr.Mengdey, learned AGP is not in a position to support the order showing any application of mind on the question of quantum of penalty by the Authorities, more particularly keeping in view the provisions of Rule 22 read with the conditions provided in the lease agreement, more particularly Part 9 of the said format provided

under Form D of the agreement.

6. It appears that when the findings of breaches are not in dispute, this Court is not required to examine the said aspects, but Mr.Pandya is right in his submission to the extent that the Authorities were required to address themselves on the question of quantum of punishment. It is not that in every matter the breaches were to result into the consequence of termination of the lease. It depends upon the gravity of the breaches and even in case of breaches or breach the Authority is required to examine the aspects of quantum of punishment, more particularly keeping in view the provisions of Rule 22(XXV) read with General Provisions under Part 9 provided under Form D for standard lease agreement. The aforesaid aspects, it appears that, are not examined by the District Collector, nor by the State Government thereafter.

7. Therefore, considering the facts and circumstances, the matter deserves to be remanded back to the Authority on the aspects of

quantum of punishment. Since the lease agreement is already terminated, until the fresh decision is taken, it is not a case where the petitioner should be permitted to continue with the lease.

8. Therefore, the impugned orders passed by the District Collector and its confirmation thereof by the State Government so far as they relate to the quantum of punishment are quashed and set aside with the further directions that the District Collector shall examine the matter on the question of quantum of punishment in light of the observations made by this Court herein above and shall pass a fresh order on the question of quantum of punishment as early as possible, preferably within a period of three months from the date of receipt of the order of this Court, after giving opportunity of hearing to the petitioner. It is further directed that until the aforesaid order is passed by the District Collector, the petitioner shall not be allowed to continue with the lease. However, after the order is passed by the District

Collector, rights of the petitioner shall stand governed accordingly.

9. The petition is partly allowed to the aforesaid extent. Rule partly made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

10. In view of the order passed in the main Special Civil Application, Civil Application No.5681 of 2006 would not survive and shall stand disposed of accordingly. Direct service is permitted.

17.7.2006 **(Jayant Patel, J.)**

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